



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,731	03/23/2001	George Harry Hoffman	41556/04012 (RS11P024)	8181
22428 7590 08/01/2007 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			EXAMINER GORT, ELAINE L	
			ART UNIT 3627	PAPER NUMBER
			MAIL DATE 08/01/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/815,731	Applicant(s) HOFFMAN ET AL.	
	Examiner Elaine Gort	Art Unit 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/7/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claims 6-15 are rejected under 35 U.S.C. 101** because the claimed invention is directed to non-statutory subject matter. Claims 6-15 recite a system comprising logic per se. If logic is merely computer code, then the method fails to comprise any physical elements and the claims are directed toward a computer program claimed as a computer listing per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. See MPEP 2106 IV.B.1(a)

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 1 recites the limitation "the store" in line 15. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the material sold" in line 16. There is insufficient antecedent basis for this limitation in the claim.

Claim 2 recites the limitation "the required goods" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the store" in line 15. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the material sold" in line 16. There is insufficient antecedent basis for this limitation in the claim.

Claim 7 recites the limitation "the required goods" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "the materials" in line 12. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "the store" in line 15. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "the material sold" in line 16. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the required goods" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hafner et al. (US Patent 5,893,076) in view of Yamamoto et al. (US Patent 5,914,878), and Huang et al. (US Patent 5,953,707).

Hafner et al. discloses the claimed device but is silent regarding: adjusting a supply of materials; calculating based on a recipe a predicted amount of materials for a given level of sales; and comparing an amount of goods sold to a predicted amount of materials for a given level of sales and determining a variance of the materials due to errors or loss.

Yamamoto et al. teaches that it is known in the art to adjust a supply of materials (construed to be "recipe" items) for making a product to ensure that adequate parts are available to produce the planned goods. Note the term "recipe" has been broadly interpreted by the Examiner to not necessarily be related to food, but to be a general guide for making any product. For example see Abstract lines 17+ discussing the setting and modifying of daily required quantities of raw materials in relation to production plans.

Huang et al. teaches from paragraph (656) to (672) that it is old and well known in the art of supply chain forecasting to compare a predicted amount of materials, or "forecasted sales", to goods sold, or "actual sales", to calculate a "forecast variance" in

Art Unit: 3627

order to “identify those products and customers for which demand patterns are particularly unstable and thus require special attention” paragraph (659).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method/system of Hafner et al. with the adjustability of a supply of materials based on a “recipe” of Yamamoto et al., and to compare an amount of goods sold to a predicted amount of materials by calculating a variance as taught by Huang et al. in order to ensure that adequate parts are available to produce the planned goods, and to identify products and customers which demand patterns are particularly unstable, respectively.

Response to Arguments

7. Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection. The Examiner has provided prior art teaching that the calculation of forecast variances are old and well known in the art of inventory management forecasting systems.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is 571/272-6781. The examiner can normally be reached on Monday and Thursday.

Art Unit: 3627

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on 571/272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Elaine Gort
Primary Examiner
Art Unit 3627

July 25, 2007